

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise
Commission General Order Number 95 Pursuant
to D.05-01-030.

Rulemaking 05-02-023
(Filed February 24, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTIONS TO ESTABLISH A SECOND PHASE TO CONSIDER
POLE TOP ANTENNAS AND TO SHORTEN TIME FOR RESPONSES**

Cingular Wireless, Crown Castle, NextG Networks, Sprint Nextel, T-Mobile and Verizon Wireless (the Wireless Group) move for an order establishing a second phase of this proceeding to address modification of General Order (GO) 95 to address pole top installations of wireless antennas. They also move for an order shortening time to five days (instead of 15) for responses to the motion.

Both motions are denied. First, the second phase proposed by the Wireless Group improperly purports to subject the Commission to mandatory dates for resolution of pole top issues. Second, the timetable proposed for the second phase would prolong this proceeding for many months, contradicting the clear intent of the Commission. (*See* Decision 05-01-030, at 31-32 (“[O]ur order today contemplates that the new rulemaking can proceed expeditiously”).)

The Wireless Group points out that removing pole top issues from the first phase of this proceeding can expedite the deposition of its witness James Stahl on December 15, since about a third of his testimony is devoted to pole top antenna installations. However, the scheduling of the deposition of the witness was an accommodation to which the Wireless Group agreed because the witness will not

be available at time of hearing February 7-10, 2006, and it is not clear that questions about pole top antennas will unduly prolong the deposition.

As an alternative to the Wireless Group's motion, the Commission would consider an unopposed motion to remove the issue of pole top antenna construction rules from this proceeding and refer that issue to the GO 95/128 Rules Committee (the Committee). The Committee on December 2, 2005, notified the Commission that it is addressing pole top antenna construction and expects to draft rules for Commission consideration in a separate proceeding. The Committee is comprised of California supply and communication professionals knowledgeable in the application of GOs 95 and 128. In its letter to the Commission, the Committee stated:

The Committee recognizes that the development of any rule or rules addressing pole top antenna construction on joint use poles is a substantive undertaking involving multiple disciplines, various industries and that unique considerations must be addressed and examined by technical professionals in order to develop a safe, workable construction rule. Thus, the Committee will also take up this matter and set this item as its top priority during our next series of scheduled meetings, December 6-8, 2005. In the course of addressing this issue, we expect a lively discourse and a thorough assessment of other applicable GO 95 rules. We are optimistic that a draft consensus rule and associated rules changes that adequately address pole top antenna construction will emerge. (Letter dated December 2, 2005, at 2.)

The pole top antenna issue apparently was not considered at any length in the workshops conducted as part of this proceeding. Arguably, the Commission may decide that a thorough vetting of pole top antenna rules by the Committee is a prudent step before the issue is presented to the Commission by way of unopposed Resolution or subsequent proceeding. If all major parties to this proceeding agree, a motion to that effect should be made promptly so that the

issue of pole top antenna rules can be removed from this proceeding and referred to the Committee.

IT IS RULED that:

1. The Joint Motion of the Wireless Group to Establish a Second Phase of the Proceeding to Address Pole Top Antenna Installations and the Motion for Order Shortening Time for Filing of Responses are denied.

2. The Commission would consider a motion supported by the major parties to remove the issue of pole top antenna installations from this proceeding while it is being addressed by the General Order 95/128 Rules Committee for later presentation to the Commission by way of Resolution or a subsequent proceeding.

Dated December 8, 2005, at San Francisco, California.

/s/ GLEN WALKER
Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motions to Establish a Second Phase to Consider Pole Top Antennas and to Shorten Time for Responses on all parties of record in this proceeding or their attorneys of record.

Dated December 8, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.